*** THE HON'BLE SRI JUSTICE B. PRAKASH RAO**

AND

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO. 12126 OF 2006

% Dated 17.11.2006

Union of India , rep., by its Secretary, Ministry of Industry and Department of Industrial Policy & Promotion, Udyog IBhawan, New Delhi and threeothers.

.... Petitioners

Vs.

$ A.U. Gopi.

.... Respondent

! Counsel for the Petitioners: Sri A. Rajasekar Reddy, learned Assistant Solicitor General

^ Counsel for the Respondent: Sri K. Srinivasamurthy, learned Counsel for the respondent-applicant

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> HEAD NOTE:

? Cases referred

[1] 2002 (3) ATJ 276
2 1988 (2) SLR 541
3 AIR 1989 SC 985
4 1993 Supp (2) SCC 210
5 (1999) 8 SCC 110
6 2003(9) SCC 164
7 AIR 1959 SC 1342
8 AIR 1968 SC 800
9 AIR 1970 SC 1494
10 1993(1) An.W.R. 453 (DB.)
11 AIR 1989 SC 985
12 1999(3) SCC 679
13 1983(3) SCC387

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 12126 OF 2006

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Central Administrative Tribunal, in O.A. No. 90 of 2006 dated 03.03.2006, the Union of India and the Salt Commissioner are before this Court.

O.A. No. 90 of 2006 was filed by the respondent-applicant. While he was working as the Personal Assistant to the Salt Commissioner he was placed under suspension on 26.06.1995. He was convicted in Criminal Case No. 5 of 1995 by the Special Judge CBI, Jaipur on 05.02.1997. He filed Criminal Appeal No. 63 of 1997 before the Rajasthan High Court, Jaipur Bench, and an interim order was passed on 17.02.1997, suspending both the sentence and the order of conviction. Thereafter, the petitioners herein revoked the order of suspension on 08.05.2001. When the respondent-applicant was under suspension, pay revision took place, in terms of the Vth Central Pay Commission, which came into effect from 01.01.1996. The respondent-applicant sought payment of subsistence allowance on the basis of the revised pay scales. Despite repeated reminders, no payment was made and

eventually the 3rd petitioner, vide proceedings dated 04.02.2005, while drawing attention of the respondent-applicant to Order No. (2)(2)(a) under F.R.53 and note-3 under Rule 7 of CCS (R.P) Rules, 1997, informed him that the benefit of the new pay scales, would accrue to a Government Servant, in respect of the period of suspension, only after his reinstatement, depending on whether the period of suspension was treated as duty or not and that, in the present case, since he was placed under suspension prior to the revision of pay scales, he would continue to draw subsistence allowance based on the existing scales of pay and that his pay in the revised scales of pay would be subject to final orders in the pending disciplinary proceedings and the orders of the appellate Court which was awaited.

Aggrieved by the said order dated 04.02.2005, the respondent-applicant approached the Central Administrative Tribunal, Hyderabad. The Tribunal, by order dated 03.03.2006, allowed O.A. No. 90 of 2006 following the order of the Full Bench of the Mumbai bench of the Central Administrative Tribunal in **J.S. Kharat Vs. Union of India**[1]. The Tribunal held that the respondent-applicant was entitled to get his subsistence allowance on the basis of the revised pay scales which came into effect during the suspension period and that the decision of the respondents, (petitioners herein), could not be acted upon. The Tribunal quashed the impugned order dated 04.02.2005 and directed the petitioners herein to pay the respondent-applicant arrears of subsistence allowance on the basis of the revised pay scales within a period of two months from the date of communication of the order.

Sri A. Rajasekar Reddy, learned Assistant Solicitor General, would submit that since the revised pay scales, in terms of the Vth Central Pay Commission, came into effect from 01.01.1996 after the petitioner was placed under suspension on 26.06.1995, he was not entitled for payment of subsistence allowance on the basis of the revised pay scales. Learned Assistant Solicitor General would place reliance on FR-53, FR-23 and the executive instructions issued in O.M. No. F.2 (36)-Establishment III 58, dated 27.08.1958, in support of his submission that it is only if the period of suspension of the respondent-applicant is treated as on duty would he be entitled for the benefit of payment of subsistence allowance on the basis of the revised pay scales. According to the Learned Assistant Solicitor General, this exercise could be carried out by the petitioners herein only after the Criminal Appeal, still pending before the Rajasthan High Court, was disposed of.

Sri K. Srinivasamurthy, learned Counsel for the respondent-applicant, on the other hand, would submit that FR-53 read with FR-23, and the executive instructions issued on 27.08.1958, have no application. Learned Counsel would submit that once his period of suspension is treated as on duty, the respondent-applicant would then be entitled for payment of the differential amount between the full salary and allowances payable to an employee minus the subsistence allowance already paid to him. According to the learned Counsel, while payment of full salary and allowances, on the basis of the revised pay scales which came into force after an employee was placed under suspension, is governed by the office memorandum dated 27.08.1958, in so far as payment of subsistence allowance is concerned, since the

amount is paid for an employee to subsist/survive during the period of his suspension, and as the subsistence allowance is paid only as a percentage of the full pay and allowances, to which an employee on duty is eligible, any revision in pay scales, after an employee is placed under suspension, must automatically result in revision of the subsistence allowance also. Learned Counsel would place reliance on **Swarnamba B.R. Vs. Karnataka State Agricultural Marketing Board (Karnataka High Court)**[2], **P.L. Shah Vs. Union of India**[3], **Umesh Chandra Misra Vs. Union of India**[4] and **R.P. Kapur Vs. Union of India**[5].

Before examining the rival contentions, it is necessary to take note of FR-23, FR-53 and the executive instructions issued in O.M. dated 27.08.1958 which read thus:

F.R.23. The holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay:

Provided that he may at his option retain his old pay until the date on which he has earned his next or any subsequent increment on the old scale, or until he vacates his post or ceases to draw pay on that time-scale. The option once exercised is final.

F.R.53. (1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:-

i. in the case of a Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil employ who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment;

ii. in the case of any other Government servant-

a. a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn, if he had been on leave on half average pay or on half-pay and in addition, dearness allowance, if admissible on the basis of such leave salary;

i. the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first

three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

ii. the amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

iii. the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

b. Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawal of such allowances.

(2). No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub-rule (3) or sub-rule (4) of Rule12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case maybe, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.

Government of India, M.F, O.M.No.2(36)-Ests.III/58 dated the 27th August, 1958:

Revision of scale of pay while under suspension:-

A question having arisen as to whether a Government servant under suspension might be given an option to elect any revised scales of pay which might be introduced in respect of the post held by him immediately prior to suspension is revised, the Government of India have decided as follows:-

1. *Cases in which the revised scale of pay takes effect from a date prior to the date of suspension.*

In such cases the Government servant should be allowed to exercise the option under FR 23 even if the period during which he is to exercise the option falls within the period of suspension. He will be entitled to the benefit of increase in pay, if any, in respect of the duty period before suspension, and also in the subsistence allowance, for the period of suspension, as a result of such option.

2. *Cases in which the revised scale of pay takes effect from a date falling within the period of suspension.*

a. Under suspension a Government servant retains a lien on his substantive post. As the expression 'holder of a post' occurring in FR 23 includes also a person who holds a lien or a suspended lien on the post even though he may not be actually holding the post, such a Government servant should be allowed the option under FR 23 even while under suspension. The benefit of option will, however, practically accrue to him in respect of the period of suspension, only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not.

b. A Government servant who does not retain a lien on a post the pay of which is changed, is not entitled to exercise the option under FR 23. If, however, he is reinstated in the post and the period of suspension is treated as duty, he may be allowed to exercise the option after such reinstatement. In such cases, if there is a time-limit prescribed for exercising the option and such period had already expired during the period of suspension, a relaxation may be made in each individual case for extending the period during which the option may be exercised.

Under F.R.53(1)(ii)(a) the subsistence allowance payable to a government servant, who has been placed under suspension, is an amount equivalent to the leave salary which the government servant would have drawn, if he had been on leave on half average pay or on half pay plus the dearness allowance, if admissible on the basis of such leave salary.

F.R.9 (21) (a) defines "Pay" as under:

"Pay means the amount drawn monthly by a Government servant as-

(i) the pay, other than special pay or pay granted in view of this personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specifically classed as pay by the President"

F.R. 9 (12) defines leave salary to mean the monthly amount paid by the Government to a Government servant on leave. As such 50% of the pay plus dearness allowance, if admissible, is the subsistence allowance to which a government servant under suspension is entitled to. As noted above, the monthly amount drawn by a government servant, which has been sanctioned for the post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre, is "pay". A person holding a post substantively is entitled for revision in the pay scales. No provision, which disentitles a person on leave from being paid leave salary on the basis of the revised pay scales, has been brought to our notice. It cannot, therefore, be said that half pay under F.R.53(1)(ii)(a) would not bring within its fold periodic revision in pay scales.

The office memorandum dated 27.8.1958, on which reliance is placed by the petitioners, has no application to the case on hand. The said O.M relates to revision of pay scales while a government is under suspension. The first class of cases thereunder are where the revised pay scales takes effect from a date prior to the date of suspension and the O.M provides that in such cases the government servant should be allowed to exercise option under F.R.53 even if the period during which he exercises option falls within the period of suspension and that he would be entitled to the benefit of increase in pay, if any, in respect of the duty period

before suspension and also in the subsistence allowance for the period of suspension as a result of such option. The second class of cases, in the O.M. dated 27.08.1958, are those where the revised scales of pay takes effect from a date falling within the period of suspension and the O.M. requires the government servant to be allowed to exercise his option under F.R.53, but provides that the benefit of such option would accrue to him, in respect of the period of suspension, only after his reinstatement depending on whether the period of suspension is treated as duty or not. Category (b) relates to those government servants who do not retain a lien on the post. In such cases, where the government servant is reinstated and the period of suspension is treated as duty, he is required to be allowed to exercise the option after reinstatement. Unlike the first category of cases for which payment of subsistence allowance is specifically provided for on the basis of the revised pay scales, the O.M. dated 27.8.1958 is silent with regards payment of subsistence allowance to the second category. On a reading of the O.M. as a whole, it is clear that, in relation to the second category of cases, the O.M. only prescribes that the benefit of revision of pay scales, which has arisen during the period of his suspension, would be extended to the government servant, depending on the decision of the competent authority in treating the period of suspension as on duty or otherwise. The O.M. does not specify that this restriction would apply to payment of subsistence allowance also.

On reinstatement of an suspended employee, the competent authority is required to determine the manner in which his suspension period is to be treated and, in case such an employee is treated as on duty, as to whether he should be paid the

differential amount between the full salary which an employee on duty is entitled to minus the subsistence allowance already paid to him during the period of his suspension. It is this differential amount which category – 2 of the O.M. dated 27.08.1958 deals with and prescribes that the benefit of revised pay scales, with regards payment of this differential amount, would depend on a decision being taken by the competent authority as to the manner in which the period of suspension is to be treated.

Now to the judgments relied on.

In **Umesh Chandra Misra**[4], the Supreme Court held:

> "…… DR Prakash while not disputing the provisions of Railway Board's letter/circular of 21/01/1966 and of Rule 2043 referred to above, contended firstly that the question of entitlement of the appellant to the subsistence allowance could not have been gone into by the Payment of Wages Authority and secondly the grant of increased subsistence allowance at the rate of 75 per cent of the salary for the period May 20, 197 6/02/1977 depended upon the decision of the competent authority. The competent authority was vested with the power to grant such increased subsistence allowance only if it came to the conclusion that the period of suspension had been prolonged for reasons not directly attributable to the delinquent employee which reasons are to be recorded by the competent authority in writing. He, therefore, submitted that in any case the matter will have to go back to the competent authority concerned……..."
>
> …….. ON the facts and circumstances of the case, therefore, we set aside the order of the tribunal and direct the respondents to pay to the appellant the following amounts: subsistence allowance (i) from November 20, 197 5/05/1976 at the rate of 50 per cent of the salary and (ii) from May 20, 197 6/02/1977 at the rate of 75 per cent of the salary with interest on both the amounts thereon at the rate of 10 per cent per annum from 26/09/1979 on which date the appellant had filed his claim before the Payment of Wages Authority till the date of payment. We further direct that the subsistence allowance be paid on the basis of the revised scale of salary, if any, which was prevalent and due to the appellant during the relevant period for which the subsistence allowance is directed to be paid. We further direct that the payment be made to the appellant within six weeks from today……."

In **Umesh Chandra Mishra**[4], the question which arose for consideration was with regards increase in the rate of subsistence

allowance payable to an employee. Since we are not concerned with the increase in the percentage of subsistence allowance, and the question which falls for examination is whether on the very same percentage of pay, as subsistence allowance, a suspended employee is entitled for payment on the basis of revised pay scales, the aforesaid judgment has no application.

In **R.P. Kapur**[5], the Supreme Court observed:

> ".....The Tribunal, in our opinion, is wrong in thinking that if the subsistence allowance before 1992 is adopted, it will amount to treating the period of suspension as on duty. We may point out that the petitioner is not asking that his pension is to be fixed on the basis of the *full salary* payable in the 10 months before 25-11-1992. The appellants plea is that the pension is to be fixed on the basis of the *subsistence allowance* fixed and drawn by him in the 10 months preceding 25-11-1992. That has been fixed on the basis of the scales as revised w.e.f. 1-1-1986. This plea, in our opinion, is certainly permissible under the rules. On the other hand, if we have to go back to the emoluments drawn before suspension i.e. the average during 10 months before 1982 then that will amount to going by the pre-1982 emoluments while the rule requires that the emoluments during 10 months *before retirement* are to be taken into account....."

In **R.P. Kapur**[5], the question which arose for consideration was as to the manner of computation of pension. The rules provided for pension to be fixed on the basis of full salary payable during the period of 10 months prior to the date of superannuation. The plea of the employee was that his pension should be fixed on the basis of the subsistence allowance fixed and drawn by him during the 10 month period preceding the date of his superannuation which was based on the revised pay scales. The Apex court held that such a plea was permissible under the rules. The said judgment is also of no avail.

In **Principal, J.D. Patil Sangludkar Vs. Ganesh**[6], the Supreme Court observed:-

"……..The provision to increase the rate of subsistence allowance pending suspension after a certain stipulated period is normally envisaged to ensure that the employer or the management concerned does not indefinitely keep an employee under the pretext of suspension out of his office without completing the inquiry and take advantage of its own lapse or delay in completing the disciplinary proceedings. In a case of the nature where the accused is charged with a serious criminal offence and is facing prosecution for the same at the instance of the police before competent criminal courts and the adjudication in respect of the same by the competent criminal court which is seized of the matter has to be awaited as a matter of necessity, and the service rule does not permit as such, the court cannot allow full subsistence allowance amounting to full pay and allowances. Unless the respondent could substantiate that in cases of the nature pertaining to him, where for any lapse or delay, the employer cannot be found fault with at all, the High Court could not have passed such an order of the nature under challenge. We therefore, set aside the order of the High Court on this ground alone. The respondent will be allowed only 50% of the salary towards his subsistence allowance, which seems to have been already paid to him……"

In **Ganesh**[6], the question which arose for consideration was with regards the rate of subsistence allowance payable to an employee under suspension. The Apex Court held that, unless the employee substantiates that there were lapses on the part of the employer resulting in his suspension being needlessly prolonged, he was not entitled to claim that the rate of subsistence allowance should be increased. The said judgment has also no application to the facts of the case on hand.

In **Swarnamba**[2], the Karnataka High Court observed:

"…..Under old Rule 98, a Government servant was entitled to subsistence allowance at the rate of 75 per cent of the pay as on the date of suspension. As suspension of petitioner was prior to the date of revision of pay, subsistence allowance was calculated and paid on the basis of pay then in force. If revision of pay had not intervened, probably, there would not have any dispute regarding quantum of subsistence allowance payable to the petitioner.

On a comparison of old and amended Rule 98, one would notice the change brought about by the omission of words "was in receipt of or which he would have received but for his proceeding or being on leave immediately prior to the date of suspension". The amended rule though not artistically worded, let me assume that it intends payment of subsistence allowance on half pay leave. 'Leave Salary' and 'Leave on half pay', as per sub-rules (1) and (3) of Rule 118 are equivalent to the pay and half of it respectively. Sub-

rules (1) and (3) of Rule 118 quantity the amount payable as 'Leave Salary' and half pay for an official proceeding on leave. Rules 98 and 118 deal with different subjects. Assuming that a delinquent official would be entitled to half pay as per these rules instead of 75 percent, as they do not specifically refer to date of suspension, as referred to in old rule 98, no assistance can be derived from these rules for the purpose of fixation of subsistence allowance payable to the petitioner. So also, amended rule 98 does not stipulate that subsistence allowance payable should be based on the pay which an official was getting as on the date of suspension. The qualification of subsistence allowance varies with the revision of pay scale. If petitioner was entitled to revised pay-scale, necessarily, she would be entitled to subsistence allowance on the basis of revised pay-scale. Considering definition of 'Leave Salary' and 'Pay', which means the revised pay scale, petitioner would be entitled to subsistence allowance on the basis of revised pay. In this view, the later part of para 5(a) of the Official Memorandum, dated 10th August 1987 which reads thus:-

"The leave salary on half pay has to be calculated with reference to the pay drawn on the date of suspension".

runs counter to the scheme of amended Rue 98. Right conferred under a rule framed in exercise of power conferred under proviso to Article 309 of the Constitution of India cannot be annulled or taken away by means of a clarification issued by State Government. Hence, it must be held that subsistence allowance paid on the basis of old pay scale was arbitrary and illegal.

For the reasons stated above, writ petiton succeeds. A writ in the nature of mandamus shall be issued directing the respondents to pay subsistence allowance on the basis of Revised Pay Rules with effect from the date on which the Revised Pay Rules came into force. Rule made absolute….."

I n **Swarnamba**[2] the Single Judge of Karnataka High Court noticed the amendment brought about to Rule 98 of Karnataka Civil Services Rules, 1958 and, while holding that the amended rule 98 did not stipulate that the subsistence allowance payable should based on the pay which the officer was getting as on the date of suspension, held that the qualification of subsistence varied with the revision of pay scales and if the petitioner was entitled to the revised pay scales, necessarily he would be entitled to subsistence allowance on the basis of the revised pay scales. Considering the definition of "leave salary" and "pay" to mean the revised pay scales, the learned Single Judge of the Karnataka

High Court held that the petitioner therein was entitled to subsistence allowance on the basis of the revised pay scales.

The question which arises for consideration in this writ petition is with regards payment of subsistence allowance, in accordance with F.R.53(1)(ii)(a), that is half pay plus dearness allowance, if admissible, on the basis of the revised pay scales. While no provision which prohibits payment of subsistence allowance, on the basis of revised pay scales, has been brought to our notice, no provision which entitles the employee to claim subsistence allowance on the basis of revised pay scales has also been referred to. In the absence of any specific provision, either providing for or prohibiting payment of subsistence allowance on the revised pay scales, the question which needs examination is whether an employee under suspension must be deemed to be entitled for payment of subsistence allowance on the basis of the revised pay scales which came into force after he was placed under suspension.

The effect of an order of suspension is not to terminate the employer/employee relationship, but only to keep that relationship in abeyance till such time as a final order, once way or the other, is passed. The obligation of the employer to pay wages to the suspended employee subsists till the relationship is severed and the contract of employment is terminated. If the Contract of service contains a condition that not the full wages, but only a lesser amount, will be paid during the period of suspension, that may be determinative. In the very nature of the term “subsistence allowance” the amount payable to the suspended employee shall be sufficient to sustain him until after the proceedings are

terminated. Even if the contract of service provides for payment of subsistence allowance, that must be necessary at least for the bare sustenance of the employee. A provision which denies subsistence allowance altogether or provides for payment of such an insignificant sum, insufficient even for minimum sustenance, may not be legal. Since the contract of service is only suspended, a suspended employee may not, ordinarily, be able to seek to engage himself in any other employment during that period. The entitlement of a suspended employee, at least to subsistence allowance, if not to full pay and allowances, for the period he was kept out of duty due to an order of suspension, has been recognized by the Supreme Court in **Hotel Imperial Vs. Hotel Workers Union**[7], **Balwantrai Patel Vs. State of Maharashtra**[8] **and V.P. Gindroniya Vs. State of M.P.**[9]. This entitlement is subject to the provisions in the service contract or the relevant rules. In the absence of such a provision, either in the contract or in the rules, an employee may be entitled to full pay and allowances for the entire period. This is so because the competent authority under the rules, or the employer as per the contract, does not reserve in himself any right to refuse remuneration wholly or in part to the employee. (**V. Sambasiva Rao, Vehicle Inspector, APSRTC., Sattenapalli Vs. The Labour Court, Guntur**[10])

The subsistence allowance is paid so that the Government servant, against whom an order of suspension is passed on account of pendency of any disciplinary proceedings or a criminal case instituted against him, could maintain himself and his dependants until the departmental proceedings or the criminal

case, as the case may be, comes to an end and appropriate orders are passed against him by the Government regarding his right to continue in service etc. depending upon the final outcome of the proceedings instituted against him. The very nomenclature of the allowance makes it clear that the amount paid should be sufficient for subsistence in the light of the ever increasing prices of basic necessities and other inflationary conditions. A Government servant cannot engage himself in any other activity during the period of suspension. The amount of subsistence allowance payable to the Government servant concerned should, therefore, be reviewed from time to time, though there may be no express rule insisting on such review. (**P.L. Shah Vs. Union of India**[11]).

Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of subsistence allowance, so that the employee may sustain himself. An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension is that he continues to be a member of the government service but is not permitted to work and further, during the period of suspension, he is paid only some allowance generally called subsistence allowance, (which is normally less than the salary), instead of the pay and allowances he would have been entitled to if he had not been suspended. An order of suspension, unless the departmental

enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression “subsistence allowance” has an undeniable penal significance. The dictionary meaning of the word “subsist”, as given in the Shorter Oxford English Dictionary, is to remain alive as on food, to continue to exist. Subsistence is the means of supporting life, especially a minimum livelihood. The act of non-payment of subsistence allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death. (**M. Paul Anthony Vs. Bharat Gold Mines Ltd**[12]).

Any criminal trial, of a civil servant under suspension, without payment of the normal subsistence allowance payable to him under the rules, would be violative of Article 311(2) of the Constitution of India. Payment of subsistence allowance at the normal rate, pending the appeal filed against the conviction of a civil servant under suspension, is a step that makes the right of appeal fruitful and is therefore obligatory. Reduction of the normal subsistence allowance pending the appeal filed against that conviction, is an action which stultifies the right of appeal and is consequently unfair and unconstitutional. Just as it would be impossible for a civil servant under suspension, who has no other means of subsistence, to defend himself effectively in the trial court without the normal subsistence allowance it would be impossible for such civil servant under suspension to prosecute his appeal against his conviction fruitfully without payment of the normal subsistence allowance pending his appeal. (**State of Maharashtra Vs. Chandrabhan Tale**[13]).

Subsistence allowance, as noted above, is paid to an employee under suspension to enable him to maintain himself and his dependants until the departmental proceedings or the criminal case comes to an end. The amount paid is hardly sufficient even for his bare sustenance during the period of suspension. Since the government servant is precluded from engaging in any other activity, he is required to sustain himself and his family solely on the subsistence allowance paid to him. While increase in the percentage of subsistence allowance would necessarily depend on the decision of the competent authority, under F.R.53(1)(ii)(a) (i), what is being claimed in the present writ petition is the prescribed subsistence allowance of half pay plus dearness allowance, if admissible, under F.R.53(1)(ii)(a), on the basis of the revised pay scales.

In the absence of a specific provision prescribing payment of subsistence allowance an employee, who is kept under suspension, would be entitled for payment of full salary plus allowances for the period he was kept out of duty. In the present case F.R.53(1)(ii)(a) restricts payment of subsistence allowance to half pay plus dearness allowance, if admissible. Since the rules do not prohibit payment of subsistence allowance, on the basis of the revised pay scales, it must be held that an employee under suspension would be entitled to be paid subsistence allowance on the basis of the revised pay scales. In the case on hand, the revised pay scales came into force with effect from 01.01.1996 after the petitioner was placed under suspension on 26.6.1995. It is not in dispute that an employee who is placed under suspension after 1.1.1996 would be entitled for subsistence allowance on the

basis of the revised pay scales. The fortuitous circumstance of an employee being placed under suspension just prior to the date on which the revised pay scales came into force, should not disentitle him from being extended the benefit of payment of subsistence allowance on the basis of the revised pay scales. Any other interpretation would result in an employee, who has been under suspension for a longer period, being paid a lesser amount as subsistence allowance when compared to an employee of the same category who has been suspended later, and may fall foul of the equality clauses under Articles 14 and 16 of the Constitution of India.

The order of the Central Administration Tribunal, in O.A.90 of 2006 dated 3.3.2006, quashing the impugned order dated 04.2.2005 and directing the petitioners herein to pay the respondent-applicant arrears of subsistence allowance on the basis of the revised pay scales does not call for interference. The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: -11-2006

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RAMESH RANGANATHAN,J

Note: L.R. copy to be marked
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After the judgment was pronounced, Sri A. Rajasekhar Reddy, learned Assistant Solicitor General, would mention that since the respondent-applicant had claimed interest at 24% and

inasmuch as the Tribunal had allowed the O.A, in effect, the petitioners herein were liable to pay 24% interest to the respondent-applicant.

We make it clear that in so far as this claim is concerned, in as much as there is no adjudication by the Tribunal in this regard, the respondent-applicant will not be entitled for interest.

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B.PRAKASH RAO,J

Date: -11-2006

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RAMESH RANGANATHAN,J

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[1] 2002 (3) ATJ 276

[2] 1988 (2) SLR 541

[3] AIR 1989 SC 985

[4] 1993 Supp (2) SCC 210

[5] (1999) 8 SCC 110

[6] 2003(9) SCC 164

[7] AIR 1959 SC 1342

[8] AIR 1968 SC 800

[9] AIR 1970 SC 1494

[10] 1993(1) An.W.R. 453 (DB.)

[11] AIR 1989 SC 985

[12] 1999(3) SCC 679

[13] 1983(3) SCC387